In the Supreme Court
OF THE
United States

OCTOBER TERM, 1942

No. 797

J. R. MASON,
Petitioner,

vs.

PALO VERDE IRRIGATION DISTRICT,
Respondent.

PETITION FOR WRIT OF CERTIORARI
to the United States Circuit Court of Appeals
for the Ninth Circuit
and
BRIEF IN SUPPORT THEREOF.

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To the Honorable Harlan F. Stone, Chief Justice of the United States, and to the Associate Justices of the Supreme Court of the United States:

Petitioner J. R. Mason prays that a writ of certiorari issue to review the decision (R. Vol. I, p. 35) of the Circuit Court of Appeals for the Ninth Circuit made in the above entitled cause on January 6, 1943, which affirms the final decree of the District Court of

the Southern District of California, Northern Division, rendered against petitioner and others on April 27, 1942. (R. Vol. I, p. 8.)

OPINION BELOW.

Opinion of the Circuit Court of Appeals (R. Vol. I, p. 32), ... Fed. (2d) .....

JURISDICTION.

The decision of the Circuit Court of Appeals was rendered January 6, 1943. (R. Vol. I, p. 36.) The mandate was stayed until disposition of the case by this Court. (R. Vol. I, p. 37.) The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code. (28 U. S. C. Sec. 347 (a).)

STATUTES INVOLVED.

Municipal Bankruptcy Act of May 24, 1934, c. 345 (48 Stat. 798), 11 U. S. C. 301-303, adding Sections 78-80 to the Bankruptcy Act of 1898; Act of August 16, 1937, c. 657 (50 Stat. 654), 11 U. S. C. 401-404, adding Sections 81-84; and Act of June 22, 1938, c. 575, Sec. 3 (b), (52 Stat. 940). Principal California statutes involved are Cal. Stats. 1937, ch. 24; Cal. Stats. 1903, ch. 238; Cal. Stats. 1905, ch. 310; Cal. Stats. 1923, ch. 452.

SUMMARY STATEMENT OF THE MATTER INVOLVED.

This is a proceeding brought by the respondent, Palo Verde Irrigation District, a California irrigation district, organized under the provisions of a special act of the California Legislature, known as the "Palo Verde Irrigation District Act" (Cal. Stats. 1923, p. 1067), under what is now chapter IX of the Bankruptcy Act of 1898 as amended. (11 U. S. C., 401-404.) The trial Court rendered an interlocutory decree confirming the plan and its decision was affirmed by the Court below.

> *Jordan v. Palo Verde Irrigation District,* 114 Fed. (2d) 691, writ of certiorari denied, 312 U. S. 693, 61 S. Ct. 712.

The Act (Title 11 U.S.C.A., Sec. 403 (f)) provides for the entry of a final decree when the bankrupt has made the composition consideration available.

> "If an interlocutory decree confirming the plan is entered as provided in subdivision (e) of this section, the plan and said decree of confirmation shall become and be binding upon all creditors affected by the plan, if within the time prescribed in the interlocutory decree, or such additional time as the judge may allow, the money, securities, or other consideration to be delivered to the creditors under the terms of the plan shall have been deposited with the court or such disbursing agent as the court may appoint or shall otherwise be made available for the creditors. And thereupon the court shall enter a final decree determining that the petitioner has made available for the creditors affected by the plan the consideration provided for therein and is discharged

from all debts and liabilities dealt with in the plan except as provided therein, and that the plan is binding upon all creditors affected by it, whether secured or unsecured, and whether or not their claims have been filed or evidenced, and, if filed or evidenced, whether or not allowed, including creditors who have not, as well as those who have, accepted it."

The final decree was entered April 27, 1942 (R. Vol. I, p. 8), from which the present appeal was taken.

[1]"Palo Verde Irrigation District (hereinafter for convenience referred to as the District) is an irrigation district organized under the provisions of a special act of the California Legislature known as the 'Palo Verde Irrigation District Act' (Cal. Stats. 1923, p. 1067). It was organized for the purpose of taking over the properties and in general the functions of the Palo Verde Drainage District and the Palo Verde Joint Levee District of Riverside and Imperial Counties, and acquiring the properties of the Palo Verde Mutual Water Company. By the terms of the Act under which the District was organized, it assumed the obligations of the bond issues of the corporations above mentioned.

There are $850,000 of 6% bonds of the Palo Verde Drainage; $170,000 of 6% bonds of the Mutual Water Company; $1,216,330.36 of 6½% bonds of the Palo Verde Joint Levee District of Riverside and Imperial Counties; and $1,938,000 of 6% bonds of the petitioner District involved in these proceedings.

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[1]The quotation following is from the opinion of Judge Stephens in the former appeal, *Jordan v. Palo Verde*, 114 Fed. (2d) 691.

The District, beginning May 1, 1930, defaulted in the payment of all bonds which it had issued and which it had assumed. In 1933 it applied to the Reconstruction Finance Corporation (herein referred to as R. F. C.) for fund with which to refinance. A plan was worked out whereby R. F. C. would advance sufficient funds to pay all bondholders 24.81 cents on the dollar of the principal amount of their bonds. Arrangements were made to carry out the plan, and the consenting bondholders (more than 92% of the entire) received the amount provided. On March 29, 1935, the District filed a petition for readjustment of its debts under the Municipal Bankruptcy Act as it was then in effect. (48 Stat. 498, 11 U. S. C. A. Sections 301-303.) Before the decision in these proceedings had been rendered, the United States Supreme Court handed down its decision in the case of Ashton v. Cameron County Water Improvement District No. 1, 298 U. S. 513, 56 S. Ct. 892, 80 L. Ed. 1309, holding the Act under which the proceedings were brought to be unconstitutional. Thereupon the District Court dismissed the proceedings, and we dismissed the District's appeal from the judgment of dismissal."

Statement of facts.

About 1877 Samuel Blythe acquired about 40,000 acres along the Colorado River, which is now part of the Palo Verde Irrigation District. He obtained the first water right upon the Colorado River. In 1908 a private mutual water company was organized. In 1916 it executed a deed of trust conveying its irrigation system in trust to secure a certain bonded in-

debtedness of which $170,000 are involved in this proceeding.

The Palo Verde Drainage District is a public corporation organized under the provisions of California Statutes 1903, page 291, and it issued certain bonds amounting to $850,000, which are involved in these proceedings.

The Palo Verde Joint Levee District of Riverside and Imperial Counties, California, a public corporation, was organized June 17, 1914 under the provisions of California Statutes 1905, page 327. The district constructed and maintained a protective levee system along the Colorado River with funds derived from two issues of bonds. Of the first issue $911,951.86 principal and of the second issue $304,378.50 principal are involved in these proceedings.

The Palo Verde Irrigation District, hereinafter referred to as the "district", was organized in 1923 for the purpose of taking over and augmenting the functions of the other two districts and the private company. It embraces over 95,000 acres of land, and is situated in the Counties of Riverside and Imperial, California.

Under Sections 12 and 13 of the Palo Verde Irrigation District Act, the district unconditionally assumed the bond issues of these three organizations. These sections declared that the drainage district and the levee district would cease to exist "except insofar as may be necessary to preserve the rights of bondholders and other creditors: * * * "The irriga-

tion district itself issued certain bonds. First issue of bonds in the amount of $1,725,000 and the entire second issue amounting to $213,000 are involved in these proceedings. The total principal bond debt involved is $4,174,330.06.

J. R. Mason, petitioner, is the owner and holder of certain of the obligations of respondent (R. Vol. II, p. 76), namely 27 bonds (of $1000 face amount each), of which 13 are of the issue of Palo Verde Irrigation District and 14 are of Palo Verde Joint Levee District of Riverside and Imperial Counties, California, and also is the owner and holder of $12,480.00 in matured coupons (R. Vol. II, pp. 76-78) and of unmatured coupons as of July 15, 1938 (R. Vol. II, pp. 59, 79) and subsequent thereto.

The District obtained a "Final Decree" (R. Vol. I, p. 8) and from this final decree an appeal was taken to the United States Circuit Court of Appeals for the Ninth Circuit (R. Vol. I, p. 17), which Court affirmed, entering its opinion. (R. Vol. I, p. 32.) This decree materially departed from the provisions of the Act. (11 U. S. C. A., 403 (f).) It placed an abrupt time limit on the period of deposit of the bonds, it altered the terms of the plan of composition (R. Vol. I, p. 11), contained injunctions relating to other debtors than the bankrupt (R. Vol. I, p. 13) and its terms interfere with the political functions of the district.

OUR VIEW OF THE CASE.

This District was not organized under the California Irrigation District Act but was organized under a special act of the California Legislature, Stats. 1923, page 1067 (ch. 452).

It will be observed that under this act the new political subdivision, Palo Verde Irrigation District, assumed the contracts of the Mutual Water Company, the Drainage District and the Levee District. These two latter districts had been organized under California Statutes previously and were also public corporations. (Cal. Stat. 1905, ch. 310, Cal. Stat. 1903, ch. 238.)

The former entities and its officers were in no respect relieved, it is submitted, of their obligations and duties and it will be observed that under these statutes the county officers of the Counties of Riverside and Imperial also have certain mandatory duties. They are not officers of the respondent but public officers of the State of California upon whom are imposed certain continuous duties and obligations.

The effect of the final decree in this case is to obliterate any duty or obligation on the part of any of these other state agencies and their officers, and to restrain the petitioner from bringing any actions which he may have against them, either for damages or other relief. It is our view of the case that the discharge of the Palo Verde Irrigation District from its obligations does not *per se* annul the obligation of these other state agencies and officials, and that

the petitioner should be permitted to pursue whatever vested rights and remedies he may have against them. This is prohibited by the decree. (R. Vol. I p. 12.)

Next, these obligations do not become barred by the Statute of Limitations within any definite period of time, and it is our view of the case that the Court had no right to place a limitation of one year upon the right to claim the funds deposited pursuant to the plan of composition. In similar cases the Court has fixed longer periods of time. Some have placed no definite period of time, as for example, in the final decree in *Mason v. Merced Irrigation District,* .....U. S....., 63 S. Ct. 38. In the instant case, petitioner is running hard against the time limit, which is April 27, 1943. (R. Vol. I, p. 12.)

Furthermore, this very Circuit Court has been inconsistent in its own opinions. In the case of *Nolander v. Butte Valley Irrigation District,* No. 10,139, decided Dec. 31, 1942, it held:

> "E. Appellant contends that the court erred in limiting to a year from the date of the final decree the period within which the bondholders may claim the amount decreed him. The decree does so confine the period. Instead it should have made the time a year from the date the decree is disposed of on appeal and on petition for certiorari, if any, or by failure to appeal or to seek certiorari."

In this case, decided six days later, it holds: "There is no merit to the contention".

Thirdly, it is vigorously contended that the District Court had no right to summarily or otherwise change the explicit terms of the interlocutory decree. An appeal was taken from the interlocutory decree and it became final. (*Jordan v. Palo Verde Irrigation District,* 114 Fed. (2d) 691.) Writ of certiorari was denied by this Court, 61 S. Ct. 712, 312 U. S. 693. Petitioner was a party to that appeal. That decree, interpreted in accordance with the clear meaning of the words used, would provide that this petitioner could obtain payment in full for a large number of his coupons. These payments would exceed the $241 payable on principal. (R. Vol. II, pp. 121, 123.)

The District Court, after the appeal from the interlocutory decree, now in its final decree interprets and changes the "true meaning" of the interlocutory decree. This judicial interpretation and construction deprives the petitioner of rights which were vested in him under the interlocutory decree. If that interlocutory decree was wrong, the respondent should have appealed therefrom and obtained a correction. It is now too late, it is submitted, to vary the explicit terms of the interlocutory decree.

QUESTIONS PRESENTED.

I. We contend that only the obligation of the Palo Verde Irrigation District is affected by the bankruptcy proceeding, and only the Palo Verde Irrigation District can be discharged from such obligation as it may have on bonds, and this discharge cannot

release the Palo Verde Joint Levee District nor the Drainage District of any obligation that they may have had, nor does it release the county officers of liability for their failure to perform mandatory, continuing duties prescribed by law, and that the petitioner should be permitted to pursue the remedies he may have against any person, official or agency other than the Palo Verde Irrigation District arising out of the contract originally made and represented by the bonds. For example, he should be permitted to pursue any remedy he may have against the treasurer of the County of Riverside, the Supervisors of Riverside County, and even to require the county officials to levy and collect assessments upon personal property where such property levies were not considered in the composition plan.

II. The Palo Verde Irrigation District has no interest in the fund which was supplied to pay off the bondholders, and it is not entitled to enrichment by any determination or judgment cutting off the rights of the bondholders to the fund after a period of a year. Furthermore, where the same Circuit Court has decided this precise question differently, the matter should be resolved and a clear principle enunciated.

III. We contend that where an appeal has been taken from an interlocutory decree, to the Circuit Court of Appeals, and that furthermore a writ of certiorari has been denied, the terms of that decree become inflexible and cannot be changed by a final decree which purports merely to interpret the same, but in fact substantially changes its terms.

IV. It is submitted that in the peculiar instance of the Palo Verde Irrigation District it is the final decree which interferes with the sovereignty of the state and the exercise of the governmental and political powers confided to this district, notably the power unlimited ad-valorem of taxation, and that it is but a step from the decree here entered to absolute control and regulation by the Bankruptcy Court of all the governmental affairs of a public state agency.

REASONS FOR GRANTING THE WRIT.

I. We submit that the petitioner has a cause of action against the former levee district and its officers, and against the Treasurer of the County of Riverside and the Board of Supervisors of that County for damages for their failure to perform their duties in the days before the interlocutory decree in this case was entered, as well as other causes of action; that the bond in this case is a joint and several note and that the only discharge if any which it was proper for the Bankruptcy Court to grant was a discharge of the obligation of the respondent Irrigation District itself. Furthermore, the Levee District bonds provide for the annual levy of taxes upon both real and personal property and for the personal liability of certain property holders. This liability and the right of petitioner was in no way considered by the Bankruptcy Court. It in no way affects the land itself and it is submitted that the personal property here referred to was in no way subject to the jurisdiction of the Court

at any time and that the District Court should not have entered its final decree restraining the petitioner from pursuing these vicarious rights and remedies.

II. The decree fixes a period of one year for the surrender of the creditors' bonds. The bankrupt has no interest nor right to in the fund created by the composition plan. The lower Court has been somewhat inconsistent in determining even when the year should begin. We submit the period should be at least as long as the statute of limitations period.

III. The interlocutory decree in this case affirmed the plan of composition. This plan of composition read as follows (R. Vol. II, pp. 21, 22, 23, 24 and 120, 121, 122, 123):

> "Palo Verde Irrigation District, being unable to meet its debts as they mature, desires to effect the following plan of composition:
>
> Said debts consist principally of issued, outstanding and unpaid bonds issued or assumed by said District, to-wit, bonds issued by the following entities and in the amounts hereinafter set opposite the names of such entities, to-wit:

	Principal Amount
Palo Verde Mutual Water Company	$ 170,000.00
Palo Verde Joint Levee District of Riverside and Imperial Counties, California, first issue	911,951.86
Palo Verdi Joint Levee District of Riverside and Imperial Counties, California, second issue	304,378.50
Palo Verde Drainage District	850,000.00

Palo Verde Irrigation District, first issue	1,725,000.00
Palo Verde Irrigation District, second issue	213,000.00
Total	$4,174,330.36

Together with certain unpaid coupons upon each of said bonds.

Said debts also include promissory note of said District payable to D. A. Foley & Co. in the principal amount of $ 4,000.00

This District proposes and offers to deliver to each and all of the owners and holders of any of the above mentioned bonds cash, or at District's option, the bonds of this District of the 'Third Issue of Bonds (Refunding)' of principal amount equal to 24.81¢ per dollar of the principal amount of the bonds of the above mentioned company and districts owned and held by the above mentioned owners and holders. Each of said bonds shall be accompanied by all of its appurtenant coupons which have not heretofore been paid. (101) In the event any such unpaid coupons due prior to May 31, 1933, are missing, the principal amount of cash, or at District's option, refunding bonds to be delivered by the District shall be reduced in the amount of 20.50¢ for each dollar of the face amount of such missing coupons. In the event any such unpaid coupons due May 31, 1933 or subsequently are missing, the face amount of such coupons will be deducted from the face amount of such cash, or at District's option, refunding bonds to be delivered by the District.

The District also proposes and offers to deliver to the owner and holder of said $4,000.00 note cash, or at District's option, bonds of said District of said 'Third Issue of Bonds (Refunding)' of principal amount equal to 25¢ per dollar of the principal amount of said note. The issuance of said 'Third Issue of Bonds (Refunding)' was authorized by vote of the electors of said District at an election held on the 4th day of June, 1934, and by a resolution for the issuance and execution of such bonds adopted by said Board of Trustees at a meeting of said Board held on the 24th day of July, 1934, as amended, to which resolution reference is hereby made; said refunding bonds shall bear interest at the rate of four per cent (4%) per annum, payable semi-annually on January first and July first, shall be dated July 1, 1934, shall be payable in such funds as are on the respective dates of payment of the principal of and interest on said bonds made legal tender for debts due the United States of America, shall be payable at the office of the County Treasurer of Riverside County, in the County of Riverside, California, or at the National City Bank of New York in the Borough of Manhattan, City of New York, State of New York, at the option of the holder and shall be in thirty (30) series to mature annually from and including July 1, 1938, to and including July 1, 1967; said bonds and the coupons thereon shall be in substantially the form set out in the resolution last mentioned and may be registerable at the option of the holder as to both principal and (102) interest; said District will provide that the schedule of maturities of said bonds set out in said last men-

tioned resolution shall be modified so as to provide bonds in such principal amounts as may be necessary to satisfy and comply with such final decree as may be made by the United States District Court in proceedings for the composition of indebtedness of said District under Chapter X of the National Bankruptcy Act.

The District shall also deliver to each and all of the owners and holders of any interest coupons detached from the above-mentioned bonds, cash, or at District's option, the bonds of said District of the 'Third Issue of Bonds (Refunding)' of principal amount (a) equal to 20.50 cents for each dollar of face amount of any such detached coupons which came due prior to May 31, 1933, and (b) equal to the face amount of any such detached coupons due May 31, 1933, or subsequently."

Attention is called to use of the words "excluding all interest due" (Interlocutory Decree, R. Vol. II, pp. 134, 138) indicating that the payment of $241 was to be in discharge of bond principal only. Regardless of what certain officials of the district may have intended in drafting its plan of composition, the plan of composition is explicitly clear. It is not ambiguous nor uncertain. It says that in addition to the payment of principal, the district "Shall also deliver to each and all of the owners and holders of any interest coupons detached from the above-mentioned bonds, cash, or at District's option, the bonds of said District of the 'Third Issue of Bonds (Refunding)' of principal amount (a) equal to 20.50 cents for each dollar of face amount of any such

detached coupons which came due prior to May 31, 1933, and (b) equal to the face amount of any such detached coupons due May 31, 1933, or subsequently". (R. Vol. II, p. 123.)

It recites that the creditors, in addition shall also be paid the full amount of specified coupons. True, these coupons may in the case of long maturity bonds amount to much more than the $248 figure offered for the principal of each $1000 bond.

The final decree completely destroys this provision of the interlocutory decree. The decision affirming this change of substance we submit should be reversed.

IV. The functions of this district are exclusively governmental. The final decree in this case for the first time imposed upon the district an absolute restraint restraining it forever from levying taxes in excess of those stipulated in the judgment. This is the effect of the decree. It is but a step from such decree to a decree which would require the district to levy assessments not required under state law, thus placing the district and its taxpayers under the control of the Court.

Prior to the final decree, no jurisdiction of any kind was invoked upon the district. The final decree, in so far as it serves to exonerate both the county, and the other districts discharged, in addition to respondent, from their mandatory duty to levy and collect taxes as prescribed by the laws of the State, and to render all the bonds wholly worthless unless surrendered by April 27, 1943, is tantamount to a decree ordering the

district to levy taxes in violation of State law, and subjecting the districts and the Counties of Riverside and Imperial and the holders of taxable real property to the control of the Federal Courts. We submit that this is an "interference" with the governmental and political affairs of the State and its governmental agencies, prohibited by sub-section (c) 403, 11 U. S. C. A.

Wherefore, petitioners pray that a writ of certiorari be issued out of and under the seal of this Honorable Court, directed to the United States Circuit Court of Appeals for the Ninth Circuit, commanding that Court to certify and to send to this Court for its review and determination a full and complete transcript of the record and of the proceedings of said Court in the case numbered and entitled in its dockets as "No. 10209, J. R. Mason, Appellant, v. Palo Verde Irrigation District, Appellee", and that the decree of said Court be reversed by this Court with directions to dismiss the proceeding and for such other relief as to this Court may seem proper.

Dated, Turlock, California,
March 3, 1943.

J. R. MASON,
Petitioner.

W. COBURN COOK,
Attorney for Petitioner.

In the Supreme Court
OF THE
United States

OCTOBER TERM, 1942

No.

J. R. MASON,
Petitioner,
vs.
PALO VERDE IRRIGATION DISTRICT,
Respondent.

BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI.

STATEMENT OF THE CASE.

A concise statement of the case is contained in the foregoing petition under the heading of "Summary Statement of the Matter Involved".

I. THE COURT ERRED IN ENTERING A DECREE ENJOINING THE BONDHOLDERS FROM ASSERTING ANY CLAIMS AFTER THE ENTRY OF THE DECREE.

There is no provision in the Act, Title 11, Section 401-404, authorizing the Court to issue any injunction

whatever by the terms of the final decree. The provisions of the Act relating to the final decree are set forth supra. The only provision for an injunction is pending the proceeding. It would appear that the debtor can properly be left to the defenses it may have in any proceeding brought against it.

Helms v. Holms, 129 Fed. (2d) 263.

Petitioner claims the right to pursue any remedy he may have either against this district, that is the Palo Verde Irrigation District, or the officials of the County of Riverside. $14,000 of the principal amount of the bonds involved in this case were issued by the Palo Verde Joint Levee District of Riverside and Imperial Counties, California, under the provisions of Cal. Stats. 1905, page 327.

Section 10 of this Act reads as follows:

> "At the time when by law it is the duty of the board of supervisors of such county to fix the annual tax rate for such county, the said board of supervisors, taking as a basis the last previous report of the commissioners as hereinbefore specified, and adopted by them, for the amount of moneys necessary to be raised in said district for the purposes thereof for that year, and the valuation of the lands and improvements thereon within such district as furnished them by the county assessor, must levy a tax upon all taxable property in such levee district sufficient to raise the amount set forth in the report as made by said commissioners and adopted by said board of supervisors."

Now it will be observed that under the Palo Verde Act incorporating the Palo Verde Irrigation District, Cal. Stats. 1923, page 1067, section 12 provides:

> "The District is authorized and empowered, through its board of trustees, to take over the properties, property rights and functions of the Palo Verde Joint Levee District of Riverside and Imperial Counties, California, * * *"

This same section also provides:

> "All bondholders and creditors or other persons having rights or relations with said joint levee district or the trustees or officers thereof are hereby authorized and empowered to deal with the trustees of this district, and to enforce their rights as against this district in like manner as might be done against the joint levee district above mentioned and the trustees and officers thereof, * * *"

Section 24 of said Act provides further:

> "All bonds issued and the interest thereon shall be paid from revenue derived from an annual assessment upon the land within the district and the improvements thereon, * * *"

Now, it clearly appears from the foregoing that under the former Levee District Act, section 10 provides for assessments not only upon the lands but upon the improvements on the land, and what is more important, upon all personal property within the area, for section 10 (supra) says that the assessment is to be levied by the county upon all taxable property. Such levies were made by the county until the passing of the Palo Verde Irrigation District

Act providing for the succession by the Palo Verde Irrigation District of the rights and properties of the former Levee District as well as the old Drainage District, after which assessments against land only (without the improvements) are to be levied by the Board of Trustees of the Palo Verde Irrigation District.

Now we submit that the petitioner here still has rights against the officers created in the Levee District Act, including the county officers of the County of Riverside who were charged with certain duties under that act as we have shown, and that the only discharge of indebtedness which could be effected by the Bankruptcy Court in these proceedings was a discharge of the indebtedness so far as the Palo Verde Irrigation District was concerned and the properties upon which it would levy, and that the final decree exceeded the jurisdiction of the Court and was erroneous insofar as the following provision taken from that decree is concerned:

> "That all the old bonds and other obligations issued or assumed by petitioner affected by the Plan of Composition approved in this cause, whether heretofore surrendered and cancelled or remaining and by whomsoever held, are hereby cancelled, annulled and held for naught as enforceable obligations of the petitioner, except as herein provided, and that the holders thereof be and they are hereby forever restrained and enjoined from otherwise asserting any claim or demand whatsoever therefor as against the petitioning district or its officers or against the property situated therein or the owners thereof or against Palo Verde Joint Levee District of River-

side and Imperial Counties, California, or Palo Verde Drainage District or against the officers of either or the property situated in either, or the owners thereof; and in particular said holders are enjoined and restrained from prosecuting or furthering as against any defendants or respondents therein named any of those certain actions, proceedings or appeals now pending in the Justice's Court of Riverside Township, Riverside County, California, the Superior Court of the State of California, in and for the County of Riverside, the District Court of Appeal of the State of California in and for the Fourth Appellate District, and the Supreme Court of said State mentioned in the Court's Findings of Fact filed in this cause, dated October 6, 1938, and from taking any step or action in any of said actions, proceedings or appeals except to consent to the dismissal thereof; and" (R. Vol. I, pp. 13, 14.)

II. THE COURT ERRED IN FIXING A PERIOD OF TWELVE MONTHS WITHIN WHICH THE BONDHOLDERS SHOULD DEPOSIT THEIR BONDS WITH THE REGISTRAR OF THE COURT FOR PAYMENT.

An irrigation district bond does not outlaw (*Moody v. Provident I. D.*, 12 Cal. (2d) 389), and there is no provision in the Act (Tit. 11 U. S. C., sections 401-404) authorizing the Court to determine the period of time within which the creditors shall take the composition offer or be forever barred therefrom.

Section 12 of the bankruptcy act was eliminated in 1938. Prior to the Chandler Act subdivision (e) then read:

> "Upon the confirmation of a composition, the consideration shall be distributed as the judge shall direct and the case dismissed * * *"

Subdivision 57 (n) of the Bankruptcy Act of 1898 provided that claims should not be proved against the bankrupt's estate subsequent to six months after the adjudication (with certain exceptions). In 1938 this subdivision was recast to provide that:

> "except as otherwise provided in this Act, all claims which are not filed within six months after the first date set for the first meeting of creditors will not be allowed except for certain exceptions."

There is no such provision in the municipal bankruptcy act indicating that no like period was to be prescribed.

As the general bankruptcy law stood prior to 1938, the question sometimes came up as to what would happen in the case of a composition proceeding where a claim had not been proved within a year.

In the important case of *In re Englander's, Inc.*, 267 Fed. 1012, the Circuit Court had this question under consideration, and held that section 57 (n) does not deny to a creditor the right to share in a fund offered by the bankrupt in composition, declaring:

> "No one can, by a legal judgment, be deprived of his property, unless he is fairly subject to some provision of the law which visits the loss upon him."

The Court declared that the rights of creditors after confirmation of composition are not lost through the operation of section 57 (n).

The same principle should pertain in a municipal bankruptcy case, and unless there is some plain provision in the law depriving the petitioner of his rights, he should not be so deprived by a "judgment".

The case just cited holds in effect that the creditor obtains a property interest in the composition offering and that this is a property right of which he is not to be deprived except by statute.

In the case of *Nassau Smelting & Refining Works, Ltd., v. Brightwood Bronze Foundry Co.*, 265 U. S. 269, 44 S. Ct. 506, Mr. Justice Brandeis, considering section 57 (n) and section 12 (a), 12 (b) and 12 (e), declared:

> "Composition is a settlement by the bankrupt with his creditors. In a measure the composition supersedes and is outside of the bankruptcy proceedings."

He also declared, page 272:

> "There is no provision in the Act which declares, in terms, that the offer extends only to those who prove their claims. Why should proof, within the year, of the existence of the debt be required where, by including the claim in the schedule, it has been admitted by the bankrupt?"

Justice Brandeis also declared:

> "Nor can the time of proof of claims as distinguished from their allowance, be of legitimate interest to the bankrupt."

In other words, the bankrupt is not interested nor should be interested in the time which is fixed for acceptance of the provisions of a composition offer. What has been deposited does not belong to the bankrupt; it belongs to the creditors. The bankrupt is discharged from his debt and is no longer interested in the matter. This seems to be the theory of the decision.

In the case of *Matter of Lenox,* 2 Fed. (2d) 92, the Circuit Court stated:

> "This is a provision for the benefit of creditors, not for the benefit of the bankrupt. Against all provable claims the bankrupt is protected by his charge. The bankrupt's property belongs to his creditors, and not to himself. It has passed from him to the trustee, for the payment of his creditors. As among them, it is a matter of indifference to him how distribution is made. If one of them lose his right to participate in the common fund by failure to make proof within the period prescribed, it does not concern the bankrupt."

If it should be suggested that the creditor is not harmed by the provision since he stands here with his bonds and can deposit them now, it is respectfully suggested that, on the other hand, most certainly the bankrupt is not affected by the provision, he being neither adversely nor beneficially affected and should not be enriched thereby and he has no standing in the matter. Furthermore, so far as the creditor is concerned, he is affected in this very case because the time prescribed does not actually permit him to litigate the point should April 27th arrive before final decision has been

reached, nor is there any cogent reason for depriving him of his property rights by this judgment.

As a matter of fact, section 57 (n) was amended by the Act of 1938 to provide that claims not filed within the time limit may nevertheless be filed in such additional time as the Court may allow and shall be allowed against any surplus remaining in the case. This shows that the time limit of section 57 (n) is to benefit creditors rather than the bankrupt. (*Collier on Bankruptcy,* Vol. 3, 1941, p. 335.)

It is not suggested that section 57 (n) has any reference to municipal bankruptcy cases except by analogy.

As has been pointed out, supra, this same Court, six days earlier, in *Nolander v. Butte Valley Irrigation District,* while denying the contention that the limit of a year should be entirely eliminated, nevertheless held that instead of permitting a year from the date of the entry of the decree "instead it should have made the time a year from the date the decree is disposed of on appeal and on petition for certiorari, if any, or by failure to appeal or to seek certiorari". It appears that two different groups of judges of the same Circuit Court have different views on this subject.

III. THE COURT ERRED IN CHANGING THE PLAN OF COMPOSITION BY THE FINAL DECREE, AND IN ENTERING A DECREE ALTERING THE TERMS AND MEANING OF THE INTERLOCUTORY DECREE.

The final decree in this case declares that: "The true intent and meaning of said Interlocutory Decree and of said Plan of Composition are that said disbursing agent shall not, nor shall said Clerk, as Registrar, pay for any $1,000 bond and all appurtenant unpaid coupons thereof, delivered to it or him under the terms of said Plan and Decree or of this Decree, more than the sum of $248.10, and that no payment shall be made for detached coupons, except to the extent that a deduction has been made for them as missing coupons, and that said Interlocutory Decree and Plan should be so construed, interpreted and applied". (R. 11.)

The plan of composition is set forth at R. Vol. II, pp. 21-24, and it provides that the district proposes that: "This district proposes and offers to deliver to each and all of the owners and holders of any of the above mentioned bonds cash, or at district's option, the bonds of this district of the 'Third Issue of Bonds (Refunding)' of principal amount equal to 24.81 cents per dollar of the principal amount of the bonds of the above mentioned company and districts owned and held by the above mentioned owners and holders." (R. Vol. II, p. 22.)

At page 24 the district in its plan goes on to propose further ("also") as follows: "The district shall also deliver to each and all of the owners and holders

of any interest coupons detached from the above mentioned bonds, cash, or at district's option, the bonds of said district of the 'Third Issue of Bonds (Refunding)' of principal amount (a) equal to 20.50 cents for each dollar of face amount of any such detached coupons which came due prior to May 31, 1933, and (b) equal to the face amount of any such detached coupons due May 31, 1933, or subsequently." (R. Vol. II, p. 24.)

The plan of the district was accepted by the Reconstruction Finance Corporation, voted on by the electors of the district, and apparently accepted by a certain number of creditors. The interlocutory decree (R. Vol. II, p. 135) recited: "That said plan of composition of debts of petitioner Palo Verde Irrigation District, an irrigation district, be and the same is hereby approved and confirmed. That a true copy of said plan is attached to this decree, marked 'Exhibit A', and by reference made a part hereof."

The plan of composition attached thereto is set forth at R. Vol. II, pp. 143-147, and contains the same provisions above quoted.

The interlocutory decree specifically provides at R. Vol. II, p. 138: "For any interest coupons detached from the above mentioned bonds, the disbursing agent shall pay 20.50 cents for each dollar of face amount of any such detached coupons which came due previous to May 31, 1933, and the face amount of any such detached coupons due May 31, 1933, or subsequently."

Now the petitioner contends, as the owner and holder of coupons, that he should be paid therefor pursuant to said plan of composition, namely: 20.50 cents for each dollar of face amount of such coupons maturing on or before May 31, 1933, and the full face amount of all coupons maturing after that date. Obviously the coupons which he so holds amount to more than $248.10 as to each $1000 bond, but he contends that the plan of composition is clear and unambiguous and that so is the decree. Furthermore, many creditors have deposited and surrendered their bonds pursuant to this decree, no notice has been given to those bondholders as to the change in the decree, and it is not known what rights they may have. These creditors may all have the right to claim full payment for the coupons involved. The proceeding of the Court was arbitrary, without notice, and deprives the petitioner of vested rights he had in the interlocutory decree.

As shown above, the interlocutory decree was appealed to the Circuit Court and affirmed in the case of *Jordan v. Palo Verde Irrigation District,* 114 Fed. (2d) 691. Application was made to this Court for writ of certiorari which was denied. (61 S. Ct. 805.) Thus the terms of the decree became final.

This Court, in *Chicot County Drainage Dist. v. Baxter State Bank,* 308 U. S. 371, 60 S. Ct. 317, has determined the principle upon which this case should be decided. There this Court held the plan of composition binding because it was *res judicata,* although the act had been held to be unconstitutional in *Ashton v.*

Cameron County Water Imp. Dist., 56 S. Ct. 892, 298 U. S. 513. In this case we submit that the interlocutory decree is binding, whether or not it expressed the intention of the framers of the plan.

The Court below, in deciding this case against petitioner, declared:

> "The court did not attempt to nor did it alter the interlocutory decree in any manner. It did as it says it did, construe, interpret and apply the part of the interlocutory decree according to its 'true intent and meaning' in order to make plain that a strained, unjust and inconsistent construction argued for by appellant should not be followed."

In the case of *Bronson v. Schulten,* 104 U. S. (14 Otto) 410-418, this Court reviewed the question of the authority of a Court to reopen a judgment and declared:

> "But it is a rule equally well established, that after the Term has ended, all final judgments and decrees of the court pass beyond its control, unless steps be taken during that Term, by motion or otherwise, to set aside, modify or correct them, and if errors exist they can only be corrected by such proceeding by a writ of error or appeal as may be allowed in a court which, by law, can review the decision."

The only exception noted was a line of cases based upon the old English writ of error *coram vobis,* resulting in a line of authorities based on equity, narrowly defined but which requires diligence and absence of negligence.

See also:

34 *C. J.* 210;
U. S. v. Mayer, 235 U. S. 55, 35 S. Ct. 16;
Hickman v. Ft. Scott, 141 U. S. 415, 12 S. Ct. 9;
Bronson v. Schulten, supra;
Franch v. Hay, 22 Wall. 238;
McMicken v. Perin, 18 How. 507;
King v. Barr, 262 Fed. 56;
Mellon v. St. Louis Union Trust Co., 240 Fed. 359.

The Court below evidently recognized the obstacle, and to avoid it declared that the final decree "should not attempt to nor did it alter the interlocutory decree in any manner". We submit that is an overstatement.

IV. THIS FINAL DECREE VIOLATES THE RULE LAID DOWN IN ASHTON v. CAMERON COUNTY WATER IMP. DIST., 298 U. S. 513, 56 S. Ct. 892, IN THAT IT EFFECTIVELY INTERFERES WITH THE GOVERNMENTAL AND POLITICAL AFFAIRS OF THE DISTRICT.

Section 83 (c) of the Bankruptcy Act, Sec. 403, of Title 11, U. S. C. A., provides:

> "* * * but shall not, by any order or decree, in the proceeding or otherwise, interfere with (a) any of the political or governmental powers of the petitioner;"

In subdivision (i) of the same section 83 it is provided that:

> "Nothing contained in this chapter shall be construed to limit or impair the power of any State

> to control, by legislation or otherwise, any municipality or any political subdivision of or in such State in the exercise of its political or governmental powers, including expenditures therefor."

It is but a step from the decree herein entered to one which would say that the district can never levy taxes except pursuant to an order of the bankruptcy Court. Indirectly, it says that now. For the first time, perhaps, we have the interference which was claimed under the interlocutory decree, which claim was repudiated by the Circuit Court of Appeals in 114 Fed. (2d) 691 and by this Court in its denial of writ of certiorari. A sovereign cannot confess such jurisdiction, so when it confesses such jurisdiction it ceases to be sovereign.

It seems inescapable that the final decree here, if it stand, must "Unsaddle a debt or burden upon a municipality which is quite clearly the equivalent of deposing a tax."

If this reasoning be correct, such a decree is explicitly prohibited by sub-section "c", Sec. 403, 11 U. S. C. A., by 28 U. S. C. Sec. 41 (1), as amended by Act of Congress August 1, 1937; by Bankruptcy Act, Sec. 64, sub. a, 11 U. S. C. Sec. 104, sub. a (4) and (5); by 265 Judicial Code; by 28 U. S. C. A. Sec. 379 and by *City of New York v. Feiring,* 313 U. S. 283, 85 L. Ed. 1337 et seq. Also by 7 Cal. Jur. 626.

These authorities are important to the solution of the problem involved in the instant case, because they prove the respect that the Congress has adhered to as

to matters unequivocally controlled by state law and which the rules of decision in the Federal Courts cannot trespass.

The main question as to whether one of these decrees interferes with the sovereignty of the state while repeatedly decided by the Circuit Courts of Appeals, has been consistently avoided by this Court, it is respectfully submitted. This Court has left on the one hand the decision in *U. S. v. Bekins,* 304 U. S. 27, 58 S. Ct. 811, holding on demurrer only that the Act in its broad terms is not in interference with sovereignty, and on the other left standing the decision in *Ashton v. Cameron,* 298 U. S. 513, 56 S. Ct. 892, holding that the things which the former municipal bankruptcy act declares could be done and the *Ashton* case disapproved, and which have now been done by the decree in this case are an unconstitutional invasion of states' rights.

This creditor can afford to lose what is involved in this case in dollars and cents, but it is only by a loss of dollars and cents that he is permitted in the Court and must first show a loss in dollars and cents before he can attempt to defend in the Court those principles of states' rights which he is charging have been swept aside during the last few years. He therefore again brings that question before this Court with the prayer that it may be determined, either by holding that the rule is firmly ensconced as in *U. S. v. Bekins* or as in *Ashton v. Cameron County.*

As this Honorable Court has ruled the bankruptcy power is "unrestricted and paramount", and that the States "may not pass or enforce laws to interfere with or complement the bankruptcy act or to provide additional or auxiliary regulations" (*Int. Shoe v. Pinkus,* 287 U.S. 261, 265), the sovereign power of the States to borrow money and contract the future revenues from taxation of real property, whether exercised directly or through an arm of the State to whom such taxing power has been confided, can no longer be viewed as sovereign, if the final decree here challenged is to stand, because such power is subject to regulation and control "unrestricted and paramount" by Congress.

Specifically, in this case, the final decree says that this public agency, a governmental institution of the State of California, and through it the State of California can, although sovereign, bow its head to control of the bankruptcy Court; that this state can, in the exercise of its sovereignty, submit to the continuing control of a Court which now says that it shall levy in effect taxes only for the amount decreed. Should this district, we submit, through the sovereign power of the legislature of the state or of its own volition impose a greater tax than the bankruptcy Court here allows, it could be restrained in the same Court and thus its sovoreignty and the sovereignty of the state is invaded.

CONCLUSION.

It is submitted that a writ of certiorari should be granted, the decree of the Court below reversed and the proceeding directed to be dismissed.

Dated, Turlock, California,
March 3, 1943.

Respectfully submitted,
W. COBURN COOK,
Attorney for Petitioner.

IN THE

Supreme Court of the United States

October Term, 1942.
No. 797

J. R. MASON,

Petitioner,

vs.

PALO VERDE IRRIGATION DISTRICT,

Respondent.

RESPONDENT'S BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT.

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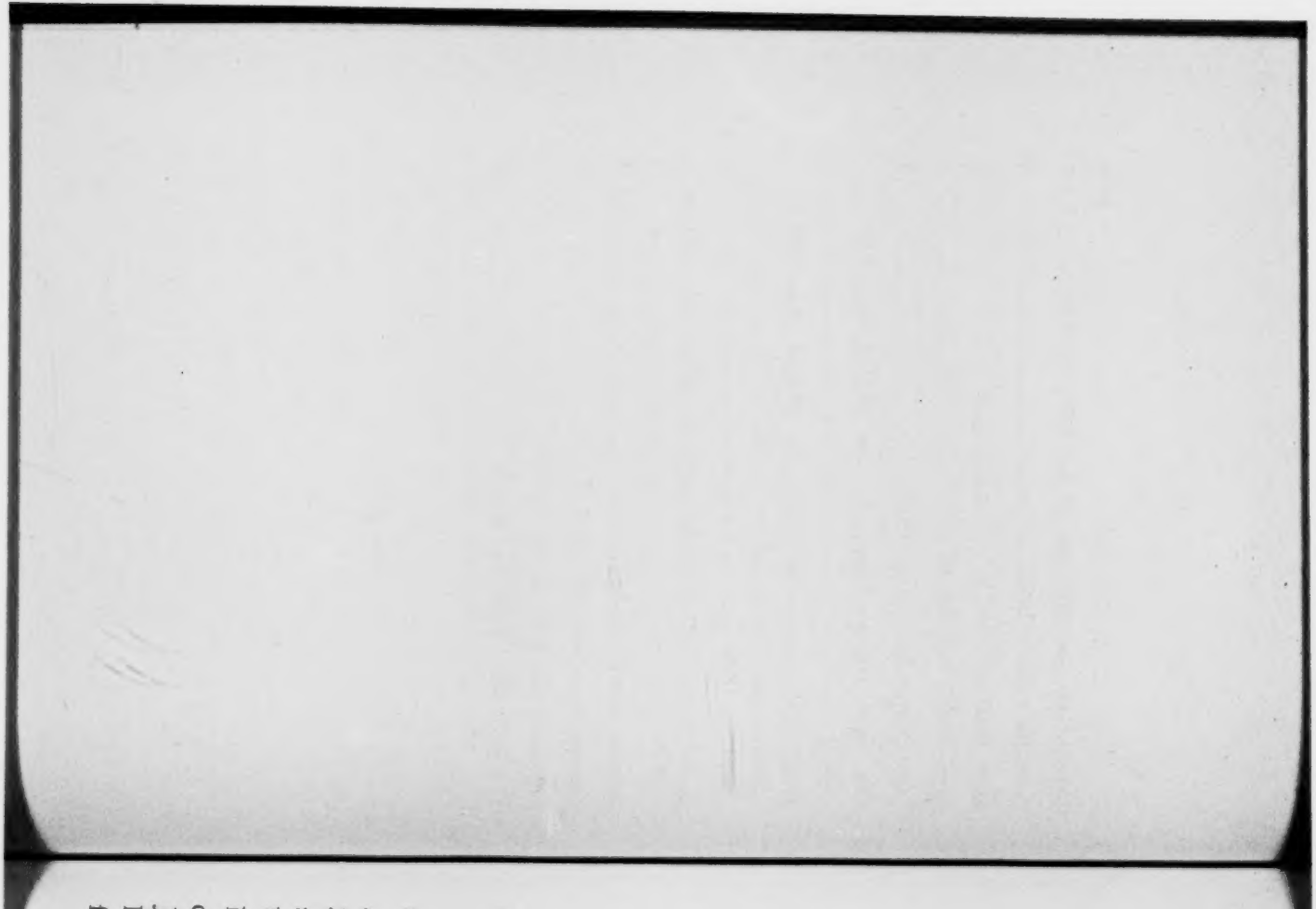

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RESPONDENT'S BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT.

Statement of the Case.

Respondent, a California irrigation district, after undergoing a complete financial collapse, filed its petition for relief under present Chapter IX of the Bankruptcy Act. Its plan of composition was confirmed by the District Court [R. Vol. II, 134]. The interlocutory decree was affirmed by the Circuit Court of Appeals on September 20, 1940 [R. Vol. II, 378], and certiorari was denied by this court (*Jordan v. Palo Verde Irrigation District*, 312 U. S. 693, 85 L. ed. 1129, Rhng. den. 312 U. S. 716, 85 L. ed. 1146). The District Court rendered its final decree [R. Vol. I, 8] on April 27, 1942, which was affirmed January 6, 1943, by the Circuit Court of Appeals [R. Vol. I, 35]. Petitioner, who was one of the four appellants from the interlocutory decree, seeks certiorari. Respond-

ent respectfully submits that the petition discloses no reason sufficient under rule 38 and the practice of this Court upon which the writ should be granted.

The Essential Facts.

Palo Verde Irrigation District comprises 95,000 acres of alluvial river-bottom, riparian to the Colorado River in the easterly end of Riverside County, California [R. Vol. II, 4, 184]. The river lies on a plane above the valley. The climate is hot, with summer temperatures up to 122 degrees; and arid, with average annual rainfall between two and three inches [R. Vol. II, 188].

In 1908 a Mutual Water Company laid out a canal system to irrigate the valley and a rudimentary levee to protect it [R. Vol. II, 185].

Gradual rising of the bed of the river led to floods in the valley and forced the organization in 1915 of a levee district and its issuance of bonds to construct extensive levees along the thirty-five mile river-front. The river bed continued to rise and floods recurred, the most disastrous of which, in 1922, inundated two-thirds of the valley [R. Vol. II, 185, 186].

In 1921 the pressure of water from the rising river caused a dangerously high water table in the valley, hence a drainage district was organized and bonded itself to construct a drainage system, so that farming might go on [R. Vol. II, 185].

For the purpose of reducing expense and coordinating effort, respondent irrigation district was formed in 1923, pursuant to a special act of the California legislature (Stat. Cal. 1923, p. 1067) which authorized the merger into respondent of the levee and drainage districts and its

acquisition of the Mutual Water Company's irrigation system. The act is otherwise patterned on the California Irrigation District Act. Respondent assumed the bonds of the three old entities and issued further bonds to reconstruct the broken levees and complete the canal system. Respondent comprises all lands in the levee and drainage districts, which were practically coterminous [R. Vol. II, 4, 186].

The peak acreage in cultivation, in 1926, was 36,135 acres [R. Vol. II, 257]. To meet the district's load of debt, its tax rate steadily mounted; in 1928 and 1929 to around $17.00 per $100.00 assessed valuation [R. Vol. II, 258]. The farmers, paying out more than they took in from their crops, borrowed on any credit they had and paid until their credit was exhausted [R. Vol. II, 312]. Then they began to drift from the land, until in 1933 the acreage farmed had dwindled to 21,117, 58% of the maximum [R. Vol. II, 257].

The land delinquent for district taxes swiftly pyramided as follows:

1927,	26.37	per cent
1928,	31.49	" "
1929,	55.76	" "
1930,	97.38	" "
1931,	99.28	" "
1932,	99.21	" "

[R. Vol. II, 258].

In 1930 the district defaulted on its bonds, which totaled $4,174,330.36 [R. Vol. II, 194]. It energetically reduced its operating expenses by more than half and continued operations by collecting water tolls from the residue of farmers remaining on the land [R. Vol. II, 252]. It

unsuccessfully sought aid from Congress [R. Vol. II, 194, 195], but finally in 1934 obtained a conditional commitment for a loan from Reconstruction Finance Corporation (hereinafter called R. F. C.) [R. Vol. II, 201] under the authority of Section 36 of the Emergency Farm Mortgage Act of 1933 (Title 43, U. S. C. Sec. 403). R. F. C. purchased from former holders 96.76% of the bonds [R. Vol. II, 224]. Petitioner, on the other hand holds 65/100ths of one per cent.

The market price of Palo Verde bonds in 1930 and 1931 was from 10 to 14. From 1931 to 1933 it declined to 2 [R. Vol. II, 151]. Twenty dollars cash would buy a one thousand dollar bond.

After filing a proceeding under Section 80 of the Bankruptcy Act, dismissed because of unconstitutionality [R. Vol. II, 295, 298] the district commenced the instant proceeding. On a full showing by the district, including testimony by qualified experts and practical farmers to facts supporting the fairness of the plan of composition and that it provided for the bondholders the limit that the land could bear [R. Vol. II, 286 to 324] and with practically no evidence offered by the bondholders, the District Court confirmed the plan.

At the time of the trial, if the district were mandamused to levy a tax to pay all matured principal and interest on its bonds, $2,954,817.51, the tax rate necessary would be $112.17 per $100.00 assessed valuation [R. Vol. II, 267]. If this levy were paid in full the remaining debt would be $3,242,830.36 and the tax rates for the next eight years would be from $12.00 to $15.00 per $100.00 [R. Vol. II, 268]. Under such circumstances "there would be no farming at all. The farmers would abandon their places wholesale and try to get them a job" [R. Vol. II, 314].

ARGUMENT.

I.

The Issue.

The issue before the court is whether or not the writ of certiorari should be granted. This brief is limited to that question. The merits of petitioner's claims of error are not involved and will not be discussed, except to illustrate their nature, as relating to the question whether the writ should issue.

II.

Grounds for Issuance of Writ.

Rule 38, Section 5 states the grounds for the issuance of certiorari to a Circuit Court of Appeals:

> "5. A review on writ of certiorari is not a matter of right, but of sound judicial discretion, and will be granted only where there are special and important reasons therefor. The following, while neither controlling nor fully measuring the court's discretion, indicate the character of reasons which will be considered:
>
> . . . . . .
>
> "(b) (1) Where a circuit court of appeals has rendered a decision in conflict with the decision of another circuit court of appeals on the same matter; (2) or has decided an important question of local law in a way probably in conflict with applicable local decisions; (3) or has decided an important question of federal law which has not been, but should be, settled by this court; (4) or has decided a federal question in a way probably in conflict with applicable decisions of this court; (5) or has so far departed from the accepted and usual course of judicial proceedings, or so

far sanctioned such a departure by a lower court, as to call for an exercise of this court's power of supervision." (Numbers in parenthesis supplied.)

Ground (1). Petitioner does not pretend that the decision of the Circuit Court of Appeals herein is in conflict with those of other circuit courts of appeals. In fact, all the decisions on Chapter IX of the Bankruptcy Act have been strikingly consistent on major issues. He does assert an inconsistency on one point (the twelve months' limit) between the decision herein and that of the same court in the previous case of *Nolander v. Butte Valley Irrigation District* (C. C. A. 9, decided December 31, 1942), 132 Fed. (2d) 704. As hereinafter shown, the discussion of the point in the *Nolander* case is *dictum,* whereas that in the the case at bar was a point of decision. At any rate, the *Nolander* case was not the "decision of another circuit court of appeals" within the meaning of Rule 38, Section 5(b).

Ground (2). Petitioner does not assert that the Court below has decided any question in conflict with applicable local decisions.

Ground (3). Petitioner does impliedly intimate that he thinks the Court below has decided important questions of Federal law which have not been, but should be, settled by this Court.

Ground (4). He does not contend that the decision below on a Federal question conflicts with any decision of this Court.

Ground (5). Nor does he contend that there has been any departure from "the accepted and usual course of judicial proceedings".

This Court will observe that although petitioner states and, to some extent, argues his four points under four successive headings, to-wit, "Our View of the Case", "Questions Presented", "Reasons for Granting the Writ", and "Brief in Support of Petition for Writ of Certiorari", he does not at any point in his petition or brief distinctly state upon what ground, under Rule 38, he claims that he is entitled to the writ.

III.

The Four Contentions Raised by Petitioner.

Petitioner makes and reiterates, under the four captions above quoted, four separate contentions. We examine these four points for the purpose of illustrating their character in the light of Rule 38 above quoted.

1. There was no error in enjoining the bondholders from asserting claims after entry of the final decree.

(A) It is true there is no provision in the Composition Act (Title 11, Sections 401-404 U. S. C.) for injunctions in the final decree. But the general authority of the Court to issue such writs in aid of its jurisdiction is amply conferred by Section 2, Item 15 of the Bankruptcy Act and by Section 262, Judicial Code (Title 28, Section 377 U. S. C.). *Nolander v. Butte Valley Irrigation District* (C. C. A. 9, decided December 31, 1942), 132 Fed. (2d) 74.

(B) Petitioner does not want to be enjoined from suing, on some undisclosed cause of action, this respondent District, the officers of Riverside County, or Palo Verde Joint Levee District.

(a) If he could still sue respondent there would be no finality whatever in the composition proceeding.

(b) Under the Levee District Act and Levee Bond Act, any duties of the county officers were purely on behalf of the Levee District in whose shoes they stood.

(c) Petitioner quotes Section 10 of the Levee District Act. The quotation is badly garbled, but it is immaterial since the bonds in question were issued under the authority of the Levee Bond Act of 1911, not the Levee District Act of 1905 [R. Vol. II, 96, 97]. Section 9 of the Levee Bond Act [full copy of which appears in Appendix A to this brief] does provide for assessments upon land, improvements and personal property.

A part of Section 24 of the Palo Verde Irrigation District Act (Cal. Stats. 1923, page 1067) is quoted by petitioner (Br. 21). The entire section is reproduced as Appendix B to this brief. The provisions of Section 24, which required that Levee District bonds should be paid by assessment upon the same properties which were taxable under the provisions of the bonds and the acts in pursuance of which they were created, were implemented by Section 28 (Cal. Stats. 1923, page 1067, as amended by Cal. Stats. 1927, page 974, and Cal. Stats. 1931, page 1890) which specifically required the levying of assessments upon lands, improvements and personal property. Petitioner's statement (page 22) that the Irrigation District Act provided for assessments against land only is not true.

(d) By Section 12 of the Irrigation District Act [copy of which is Appendix C hereto] the Levee District was merged into the Irrigation District. All of its territory is within the boundaries of the Irrigation District [R. Vol. II, 94]. The substitution of the Irrigation District for the Levee District, with full and adequate power to levy

taxes and to pay the levee bonds, worked no harm to the bondholders. (*Moody v. Provident Irrigation District,* 12 Cal. (2d) 389, 394.) The Irrigation District is the statutory successor of the Levee District, and the Levee District is now twenty years defunct. Petitioner could not recover from the land or landowners of the Levee District without recovering from the land or landowners of the Irrigation District, which it is the function of the final decree herein to prevent. (*Nolander v. Butte Valley Irrigation District* (C. C. A. 9, decided December 31, 1942), 132 Fed. (2d) 704.)

2. The Court did not err in fixing the twelve months' period within which bondholders should deposit their bonds.

A. The remarks of the Court in *Nolander v. Butte Valley Irrigation District (supra)* on this point were *dictum* since the Court concluded that by reason of a stipulation extending the time for deposit of the bonds the appellant was not injured. Therefore the point was moot.

(B) However, the point urged in the *Nolander* case, that the twelve months should run from the date the final decree became final instead of the date of its issuance, was not urged before the Circuit Court of Appeals herein. In the case at bar petitioner claimed before the Circuit Court of Appeals (Op. Br. 11) that no time limit for deposit of bonds could be fixed.

(C) The one year period was fixed in *Chicot County Drainage District v. Baxter State Bank,* 308 U. S. 371, 373, 84 L. ed. 329, and at page 375 the Court stated:

> "It appears that the proceedings in the District Court to bring about a plan of readjustment were conducted in complete conformity to the statute."

Of course there must be some time at which a litigation is at an end. Appellant could produce his bonds and deposit them in one day. He has made no effort to suspend the operation of the final decree by supersedeas or otherwise.

3. The Court did not change the plan of composition by the final decree. The final decree interpreted the true meaning of the plan and interlocutory decree.

Petitioner picks out one clause of the plan of composition and takes it literally as authorizing him to detach all his coupons from the bonds and present them as "detached coupons" for an allowance which would exceed the amount allowed by the plan for both bonds and coupons by an amount exceeding $10,000.00. The District Court prohibited this dodge by interpreting the entire plan to mean that it could not be done. If petitioner's scheme were the true meaning of the plan, the plan could not work out, because the R. F. C. loan on which the plan was based called for the retirement of $4,178,330.36 of indebtedness by the use of not over $1,039,423.00, which would be at the rate of 24.81¢ per dollar of principal of the bonds. Since petitioner had made the same claim in *Mason v. Anderson-Cottonwood Irrigation District* (126 Fed. (2d) 921) the trial judge was fully justified, whether or not there was an ambiguity, patent or latent, in the interlocutory decree or the plan, in setting out in the final decree the true meaning of the plan. Title 11, Section 403(e) U. S. C. specifically requires that the trial judge must be satisfied that the plan "is fair, equitable, and for the best

interests of the creditors and does not discriminate unfairly in favor of any creditor or class of creditors; . . .". It is self evident that petitioner seeks a preference over what other bondholders have been paid.

4. The final decree does not interfere with governmental or political affairs of the District.

It is idle for petitioner now to argue that the final decree interferes with governmental or political affairs of the District. The point was settled in *Mason v. Merced Irrigation District,* 126 Fed. (2d) 920 (Cert. denied, ... U. S. ....., 87 L. ed. Adv. Op. 37; Rhng. den. 87 L. ed. Adv. Op. 107) and *Mason v. Anderson-Cottonwood Irrigation District,* 126 Fed. (2d) 921 (cert. denied, 316 U. S. 697, 86 L. ed. 1767; rhng. den. 87 L. ed. Adv. Op. 51).

Conclusion.

We have not attempted herein to argue *in extenso* the merits of the four points raised by petitioner, but we have sought to show, not only that they are untenable, but that they are points in ordinary run-of-the-mill litigation, resting upon and limited to the particular facts of the individual case, for which the Circuit Courts of Appeals "are, and must be, courts of last resort, . . .". (*Frankfurter and Hart,* 48 Harvard Law Review 238, 260, *et seq.*) They do not possess "the character of importance" which should move this court to take jurisdiction. None of the points raised has any general or widespread or basic public significance.

The petition for certiorari is one of the 80 per cent of such applications made with what the former Chief Justice has called "an utter absence of any good reason for asking our review" (*Hughes, C. J.*, address before American Law Institute, 20 American Bar Association Journal 341).

The writ should not issue, when its purpose would be merely the re-examination of questions of fact under conflicting evidence or the scrutinizing of the Circuit Court's application of ordinary rules of law thereto.

It is respectfully submitted that the petition should be denied.

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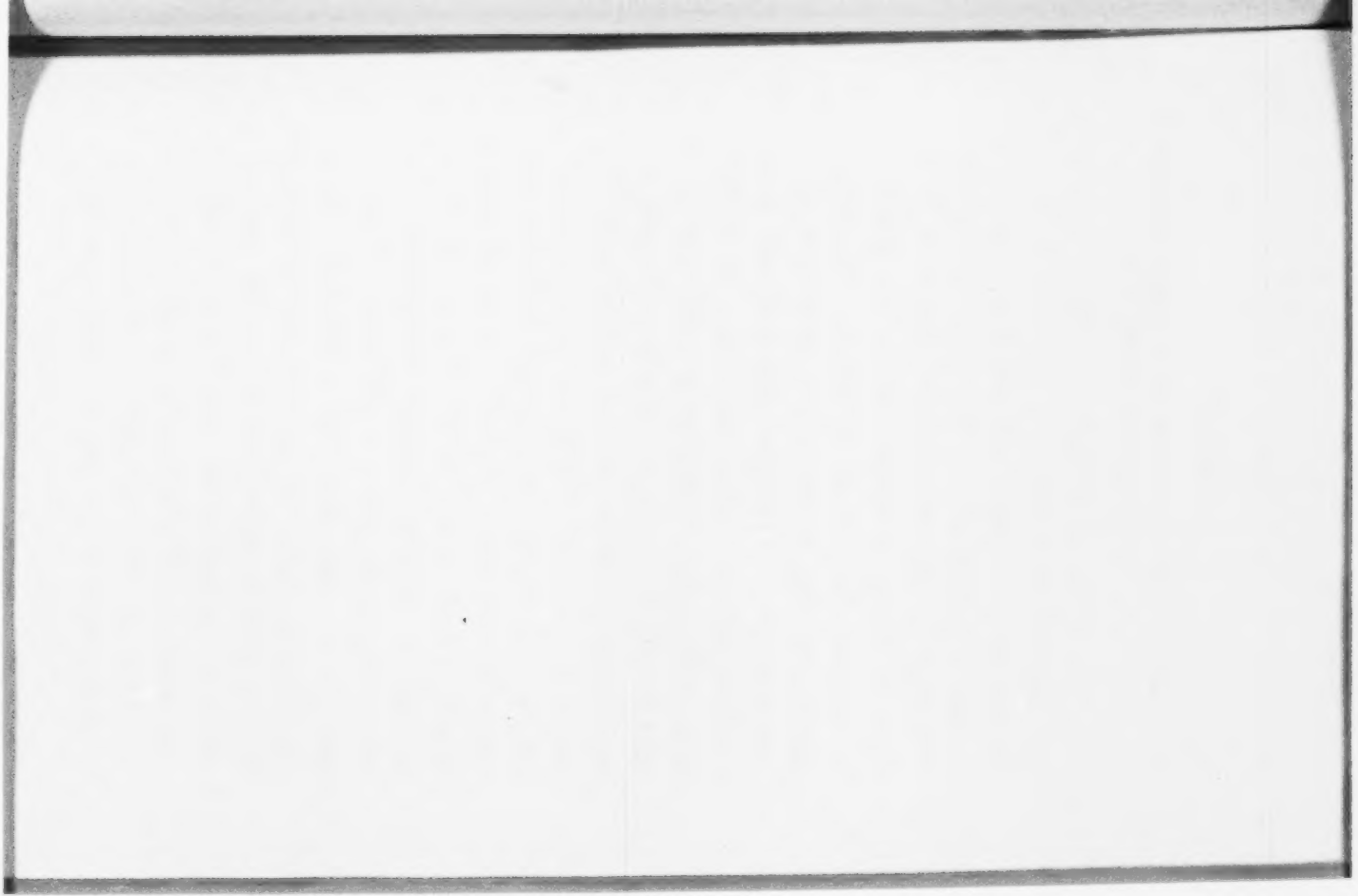
Attorneys for Respondent.



APPENDIX A.

Section 9, Levee District Bond Act of California (Cal. Stats. 1917, p. 818).

"Tax to pay interest and principal: Levy and collection: Lien on property: Levy and collection of tax when land situated in more than one county. In addition to any other estimate which the board of trustees may be required by law to make and to submit to the board of supervisors of the county in which said district is situated, the board of trustees, on or before the first day of September of each year, shall certify to the board of supervisors, if said district is situated in one county, but if it comprises lands situated in more than one county, then the respective boards of supervisors of each county within which lands of said district are situated, the amount of interest upon all outstanding bonds to grow due within the said year, and the amount of moneys necessary to redeem any or all outstanding bonds that may grow due in said year. At the time when by law it is the duty of the board of supervisors of said county to fix the annual tax rate of such county, said board of supervisors must levy a tax upon the taxable property situated in such levee district, for the interest and redemption of said bonds, and such tax must not be less than sufficient to pay the interest on said bonds for that year and such portion of the principal as is to become due during such year, and such proportion of the principal that at the end of ten years the sum raised from such levies shall equal at least twenty-five per cent of the amount of bonds issued, at the end of twenty years at

least fifty per cent of the amount, and at and before the date of maturity of the bonds shall be equal to the whole amount of the principal, and the money arising from such levies shall be known as the bond fund, and shall be used for the payment of bonds and interest coupons and for no other purpose whatever; and the county treasurer shall open and keep in his book a separate and special account which, at all times, shall show the exact condition of such bond fund.

Levy and collection: Lien on property. Such tax shall be levied on all property in the territory comprising the district, and shall be collected at the same time and in the same manner and form as county taxes are collected, and when collected shall be held by the treasurer for the credit of said district, to be paid by orders of such treasurer issued under the authority of and signed by the president of the board of trustees of said district. Such taxes shall be a lien on all the property within the territory comprising the district, and of the same force and effect as other liens for taxes, and its collection shall be enforced by the same means and in the same manner as provided for in the enforcement of liens for county taxes.

Levy and collection of tax when land situated in more than one county. In the event the said district comprises land situated in more than one county, then said estimate shall be furnished to the board of supervisors of each of the counties within which said lands of said district are situated. In such case at the time when by law it is the

duty of the board of supervisors of said respective counties to fix the annual tax rate of each county, it shall be the duty of the board of supervisors of each of said counties respectively to levy a tax upon the taxable property in such levee district as may be situated in said county for the interest and redemption of said bonds, and such tax must not be less in the aggregate than sufficient to pay the interest on said bonds for that year and such portion of the principal as is to become due during such year, and such portion of the principal that at the end of ten years the sum raised from such levies shall equal at least twenty-five per cent of the amount of bonds issued, at the end of twenty years at least fifty per cent of the amount, and at and before the date of maturity of the bonds shall be equal to the whole amount of the principal, and the money arising from such levies shall be known as the bond fund and shall be used for the payment of bonds and interest coupons and for no other purpose whatever. The county treasurer of each county shall open and keep in his book a separate and special account which shall at all times show the exact condition of such bond fund. Such tax shall be levied on all property in the territory comprising the district situated in said county, and shall be collected at the same time and in the same manner and form as county taxes are collected, and when collected shall be held by the treasurer of each of said counties. Upon the first days of January, April, July and October of each year succeeding the date of issuance of said bonds, the county treasurer of each county, other than the county wherein

the larger portion of the lands of said district is situated, shall transmit to the county treasurer of the county in which the larger portion of the lands of said district is situated all sums then in his possession in said bond fund, and the county treasurer of the county in which the larger portion of the lands of said district is situated shall issue his receipt therefor. Such taxes shall be a lien upon all the property within the territory comprising the district, and of the same force and effect as other liens for taxes, and the collection of said taxes shall be enforced by the same means and in the same manner as provided by law for the enforcement of liens for county taxes. (Amended by Stats. 1915, p. 916; Stats. 1917, p. 818.)"

APPENDIX B.

Section 24, Palo Verde Irrigation District Act. (Cal. Stats. 1923, p. 1067.)

Sec. 24. Paid by Annual Assessment. All bonds issued and the interest thereon shall be paid from revenue derived from an annual assessment upon the land within the district and the improvements thereon, and all said properties within the district shall be and remain liable to be assessed for such payment, as hereinafter provided, in so far as any bonds created or authorized under the provisions of this act are concerned; but with respect to all bonds that have been issued and sold, or which may hereafter be sold, of the said Palo Verde joint levee district and the Palo Verde drainage district, the interest and principal thereof shall be paid from revenue derived from the annual assessment upon the properties within the boundaries of said respective districts, which are taxable therefor under the provisions of said bonds and the acts in pursuance of which they were created.

APPENDIX C.

Section 12, Palo Verde Irrigation District Act (Cal. Stats. 1923, p. 1067).

Sec. 12. Taking over the Properties and Functions of the Palo Verde Joint Levee District. The district is authorized and empowered, through its board of trustees, to take over the properties, property rights and functions of the Palo Verde joint levee district of Riverside and Imperial counties, California, and it shall be the duty of the board of trustees to take the necessary steps for acquiring the same in the following manner:

Upon approval of the property owners, of the creation and organization of this district by a majority vote, at an election to be held for that purpose as hereinbefore provided, and as soon as the organization of the district is complete by the election and qualification of its officers, all of the levees, properties, property rights and functions of the Palo Verde joint levee district above mentioned, shall revert to and become vested in this district, but subject, however, to the rights of the holders of any and all of the bonds or other outstanding claims or evidence of indebtedness of said Palo Verde joint levee district, and the lien of all such bonds and all rights of the bondholders and creditors of said levee district shall be unimpaired and enforcible against the lands and property owners within the boundaries of said joint levee district to the same extent and in like manner as if this act had not been passed, and said district continued to exist; *but provided, however,* that all of such outstanding bonded or other

indebtedness shall be assumed by this district, and the collection of principal and interest may be enforced through this district in like manner as it might have been enforced through the joint levee district, and the board of trustees of this district is hereby authorized and empowered, and it shall be its duty to carry into effect and perform, all of the obligations undertaken by said levee district through this district, and the trustees thereof, for the assessment and collection of taxes for the payment of the principal and interest of said bonds and other indebtedness, and all other obligations and duties in every other respect provided for the protection, payment and liquidation of the principal and interest of the bonded and other indebtedness of said joint levee district.

All bondholders and creditors or other persons having rights or relations with said joint levee district or the trustees or officers thereof are hereby authorized and empowered to deal with the trustees of this district, and to enforce their rights as against this district in like manner as might be done against the joint levee district above mentioned and the trustees and officers thereof, and all notices, demands, tenders or other dealings that might have been had with said joint levee district or the trustees or officers thereof may be made to or had with the trustees of this district with the same force and effect. Likewise, all obligations or duties or indebtedness undertaken or contracted to be paid or performed by any persons, firms or corporations, to or with said joint levee district, may be enforced for or paid to this district with the same force

and effect, and in like manner as undertaken to be performed for or paid to said joint levee district. And this district shall have the right to enforce all rights or obligations which have accrued or may accrue to said joint levee district.

The trustees of this district, as soon as they qualify and are organized as hereinbefore provided, shall take over and become vested with the management of all levees, properties, records, moneys on hand or other assets of said joint levee district, and the trustees of said joint levee district shall deliver all of such property, records or other assets to the trustees of this district, and thereupon said district shall be deemed to be merged in and superseded by this district, and cease to exist except in so far as may be necessary to preserve the rights of bondholders and other creditors; *provided, however,* that all funds or properties which come into the possession or under the control of this district from said levee district shall be expended and used only in connection with the joint levee district work, and for the purposes authorized by the act under which it was created.

The title to all properties of the joint levee district and all property and other rights belonging to or existing in favor of said district are hereby vested in this district, and this district shall have the right to maintain suits or other proceedings necessary for the protection and enforcement of any of the rights of said levee district, and may be sued and shall have the right to defend in like

manner as suits might have been maintained or defended if said levee district had continued to exist.

Upon the taking over of the property and affairs of said levee district, the board of trustees of this district is authorized and empowered, and it shall be its duty, to proceed as rapidly as may be practicable with the necessary construction work for the improvement, extension and better protection and preservation of the water system, the lands and inhabitants within the district, against overflow of flood waters from the Colorado River, and to maintain and operate the same to the end of preventing if possible a repetition of the devastating floods of previous years. In that behalf and for that purpose the board is authorized to cooperate with the United States government, the government of the state of Arizona, or of the state of California, or any other public agencies, departments, districts or private concerns, or individuals, in any joint project that may be undertaken for straightening or changing the course or the channel of the Colorado River or keeping the same within its levees and banks, provided the board of trustees deem it advisable to do so.

Subject Index

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Texts

In the Supreme Court
OF THE
United States

OCTOBER TERM, 1942

No. 797

J. R. MASON,
Petitioner,
vs.
PALO VERDE IRRIGATION DISTRICT,
Respondent.

PETITION FOR A REHEARING.

To the Honorable Harlan F. Stone, Chief Justice of the United States, and to the Associate Justices of the Supreme Court of the United States:

Comes now, the petitioner herein, J. R. Mason, and presents this his petition for a rehearing of the petition for a writ of certiorari herein, and in support thereof respectfully shows:

I.

THE FUNDS INTERFERED WITH BY THE DISCHARGE IN THE FINAL DECREE ARE STATE FUNDS.

They are State funds, dedicated by the sovereign State of California for specific purposes; they belong to the State the same as funds derived from taxes payable by private holders of land or other taxable property for the support of the San Francisco Harbor, or any other State function.

These funds stem from powers "reserved to the States" under the 10th Amendment, never surrendered, and which therefore, unlike the species of tax involved in the case of *Maricopa County v. Valley National Bank,* decided by this Court on March 1, 1943, were never based on a power "conferred" on the States by the Congress. See *The Federalist,* Nos. XXXII, XXXIII, *"Municipal Debt Adjustments under the Bankruptcy Act",* G. J. Patterson, University of Pennsylvania Law Review, Vol. 90, No. 5, March, 1942.

The Supreme Court of California has ruled squarely that these funds and all other property belonging to such a State agency as the respondent constitute "property owned by the State". See *Anderson Cottonwood I. D. v. Klukkert,* 13 Cal. (2d) 191, 88 Pac. (2d) 685. See also *Glenn Colusa I. D. v. Ohrt,* 31 Cal. App. (2d) 619, 88 Pac. (2d) 763.

The question of whether the Metropolitan Water District is a "municipal corporation" or "State agency" like respondent was decided on February 24, 1943 by the California Supreme Court, in which deci-

sion the Court also took occasion to reaffirm that an irrigation district in California is a State agency, and not a "municipal corporation."

In this case, *Metropolitan Water District v. County of Riverside,* 134 Pac. (2d) 249, the Supreme Court said:

> "This court held that inasmuch as plaintiff (Metropolitan Water District) 'more closely resembles a municipal corporation than it does a *state agency such as irrigation and reclamation districts',* the disqualification of judges imposed by the code was without application. * * *
>
> Neither the Turlock (Irrigation District) nor the Orange County case may be accepted as authoritative determination that a metropolitan water district such as plaintiff is not a 'municipal corporation' ". (Emphasis ours.)

These recent decisions of the State Court definitely establish the true nature of the funds interfered with by the final decree. They are property belonging to the sovereign State of California, and hence, we respectfully submit, with all deference, are a species of property *ultra vires* any power of the Congress to regulate, and which the Congress expressly exempted under the Act of August 16, 1937, as amended, 11 USCA §§ 401-404, by the inclusion therein of the explicit prohibition in 11 USCA Sec. 403, subsections (c) and (i).

This limitation was urged as one of the most important features of the amended Act, and was recognized as of basic importance by this Honorable Court,

when it quoted from the Report of the House Committee on the Judiciary in the *Bekins* decision, as follows:

> "No interference with the fiscal or governmental affairs of a subdivision is permitted * * * no control or jurisdiction over that property and those revenues of the petitioning agency necessary for essential governmental purposes is conferred by the bill."
>
> *U. S. v. Bekins,* 304 U.S. 27, 51.

II.

THE ESSENCE OF THE FINAL DECREE IS THAT IT SEEKS TO DIRECT THE APPLICATION OF THESE STATE FUNDS. THIS INTERFERENCE MUST BE ILLEGAL.

Respondent contends that the question presented in Point IV of petitioner's brief "was settled" in the cases cited on page 11 of his brief, and that it is therefore "idle for petitioner now to argue that the final decree interferes with governmental or political affairs of the District."

Respondent is, with due deference, mistaken.

The final decree in the *Merced* case contains no time limit outlawing the bonds involved in that case. The vested property rights of the petitioner in that case have not been meted out the "death sentence" as are those of petitioner and other creditors, by the drastic forfeiture terms of the final decree in the instant case.

In the *Anderson Cottonwood* case, also cited by respondent as "settling" the matter, the point as pre-

sented here could not be raised, because the Court below had said, "In view of the failure to specify the point or to argue it in the brief, the alleged error will not be considered." (126 Fed. (2d) 921, 922.)

Although the question of jurisdiction, as that point was construed and decided in the *Ashton* case (298 U.S. 513) has been raised in a number of cases involving the same species of State agency as respondent, since the *Bekins* case, it has been presented only in appeals from interlocutory decrees, not one of which decrees involved an order directing the application of the trust funds freed by the terms of the final decree in the instant case.

The interlocutory decrees involved only the creditors, but did not in any respect serve to exonerate any California irrigation district from the mandatory duties imposed upon it by applicable State law which governs the application of the State funds and property interfered with by the final decree in the instant case.

Such a State agency may not be sued.

Moody v. Provident Irr. Dist., 12 Cal. (2d) 389, 85 P. (2d) 128.

Therefore, nothing in the interlocutory decrees was in conflict with applicable State law, as it had been construed by the highest State Court.

Also, for the reasons shown, your petitioner was not able to raise the basic question here presented, when filing the two petitions cited in respondent's brief. Hence we respectfully submit that the contention of

respondent that "The point was settled" is a clear overstatement.

In *Worthen v. Kavanaugh,* 295 U.S. 56, 60, it was stated:

> "In the books there is much talk about the distinctions between changes of the substance of the contract and changes of the remedy. * * * The dividing line is sometimes obscure."

At most, the interlocutory decrees which have been taken to this Honorable Court from California involved the "remedy", and in no sense did they involve the "substance of the contract" as does the final decree here challenged.

This final decree, if it stand, is tantamount to a wrench to the doctrine of immunity, steadfastly denounced by this Court, when such State functions were involved, as here.

> "The difficulties arising out of our dual form of government, and the opportunities for differing opinions concerning the relative rights of the state and national government are many; but for a very long time this Court has adhered steadfastly to the doctrine that the taxing power of Congress does not extend to the States or their political subdivisions. The same basic reasoning which leads to that conclusion, we think, requires like limitation upon the power which springs from the bankruptcy clause."
>
> *Ashton v. Cameron County W.I.D.,* 298 U.S. 513.

> "One branch of the government can not encroach on the domain of another without danger.

The safety of our institutions depends in no small degree on a strict observance of this salutary rule."

Sinking Fund cases, 99 U.S. 700, 718.

III.

GREAT UNCERTAINTY NOW EXISTS INVOLVING THE LINE SEPARATING THE POWERS RESERVED TO THE STATES AND THOSE GRANTED TO THE FEDERAL GOVERNMENT AS HERETOFORE STEADFASTLY ADHERED TO BY THIS COURT.

We are not here questioning the constitutionality of the amended Chapter IX, but the application of it to the particular funds and obligations affected by the terms of the final decree, as construed by the Court below, in the instant case. The radically altered language in the severability clause in the amended Act (11 U. S. C. A. Sec. 401), plus the deletion of the provision in the original Chapter IX that made state consent a prerequisite, plus the explicit prohibitions in the amended Act (subsections (c) and (i), Sec. 403), would seem to admit of no doubt that the Congress was meticulous in respect of the limitations on the jurisdiction it intended to grant to its Courts under the amended Act.

As was said by this Court in *Cheathem v. Norvekl,* 92 U. S. 561, 562:

> "All governments, in all times, have found it necessary to adopt stringent measures for the collection of taxes, and to be rigid in the enforcement of them * * *

> In this country, this system for each *state* or for the Federal Government provides safeguards of its own against mistake, injustice or oppression, in the administration of its revenue laws . . .
>
> *That system is intended to be complete . . .*
>
> If there existed in the courts, State or National, any general power of impeding or controlling the collection of taxes, or relieving the hardship incident to taxation, the very existence of government (State or National) might be placed in the hands of a hostile judiciary." (Emphasis ours.)

Is it not well settled by our laws that certain powers are inherent in the people, and so inalienable that they can not be subjected to control even by the people themselves, much less by representatives to whom the guardianship of such powers has been entrusted for a time? There are certain powers vested by the people in their state governments, which can not be abdicated or subjected to the jurisdiction of the federal government. The power of which state sovereignty itself is composed, is the power to lay and collect direct taxes and to borrow money, and with the exercise of this power the final decree as applied here, "interferes" (comes into collision). This is clearly an interference of the same sort as if it authorized the same agency of the State to levy and collect direct ad valorem taxes at rates higher than those required or allowed by applicable State law. The rule must apply both ways, equally.

No case has been cited, and petitioner knows of none which even suggests that the foregoing prin-

ciples with regard to the doctrine of dual sovereignty are not still the rule of law, and in support of this view we quote from the opinion of this Court in the case of *United States v. Butler,* 298 U. S. 1, as follows:

> "It hardly seems necessary to reiterate that ours is a dual form of government; that in every state there are two governments—the state and the United States. Each state has all governmental powers save such as the people, by their Constitution, have conferred upon the United States, denied to the states, or reserved to themselves. The federal union is a government of delegated powers. It has only such as are expressly conferred upon it and such as are reasonably to be implied from those granted. In this respect we differ radically from nations where all legislative power, without restriction or limitation, is vested in a parliament or other legislative body subject to no restrictions, except the discretion of its members . . .
>
> From the accepted doctrine that the United States is a government of delegated powers, it follows that those not expressly granted, or reasonably to be implied from such as are conferred, are reserved to the states or to the people. To forestall any suggestion to the contrary the Tenth Amendment was adopted."

In the case of *Merriweather v. Garrett,* 102 U. S. 472, it was said:

> "We are of the opinion that this court has not the power to direct a tax to be levied for the payment of these judgments. This power to impose

burdens and raise money is the highest attribute of sovereignty, * * *

Especially is it beyond the power of the Federal judiciary to assume the place of a State in the exercise of this authority at once so delicate and so important.

It is certainly of the highest importance to the people of every State that it should make provision, not merely for the payment of its own indebtedness, but for the payment of the indebtedness of its different municipalities. Hesitation to do this is weakness; refusal to do it is dishonor. Infidelity to engagements causes loss of character to the individual; it entails reproach upon the State."

As this Honorable Court said in *Providence Bank v. Billings,* 4 Peters 514:

"Whatever may be the rule of expediency, the constitutionality of a measure depends not on the degree of its exercise, *but on its principle.*" (Emphasis ours.)

Also, in *Von Hoffman v. Quincy,* 4 Wall. 535, this Court said:

"The power (of taxation) given becomes a trust which the donor can not annul and the donee is bound to execute; and neither the State nor the corporation can any more impair the obligation of contract in this way, than in any other."

It is too well settled to require citations that neither consent nor submission by the states can enlarge the powers of Congress.

The Courts below, have ruled that the scale down of public bonds can be effected under the amended Chap. IX without state consent.

In re So. Boardstown Dr. Dist., 125 Fed. (2d) 13.

The basic constitutional principle is well illustrated by holy writ. In the Bible it is written:

"Thou shalt not covet they neighbor's wife." Ex. 20:17, and, if the neighbor "consents", adultery is committed, which is prohibited by Ex. 20:14.

Therefore, if the final decree below is not reversed, the rule that "State powers can neither be appropriated on the one hand nor abdicated on the other", declared by this Court in *Carter v. Carter Coal Co.,* 298 U. S. 238, and also the provisions in Section 6, Article XIII of the California Constitution, "The power of taxation shall never be surrendered or suspended by any grant or contract to which the State shall be a party", will clearly be broken.

If the Courts or the Congress are once permitted to issue decrees which serve to forgive direct taxes on the value of land, lawfully payable by private interests, those same Courts must possess the power to control the collection of any other taxes lawfully due to a state, to repay money borrowed by the state or one of its instrumentalities, to whom its taxing power has been confided and pledged, and even to forbid a state from levying or attempting to enforce the collection of taxes or rent from those holding land.

The holders of such bonds, as those belonging to your petitioner, are denied aid by the federal Courts

when seeking to enforce their contracts by demands that the lien created by state law for such unpaid taxes be foreclosed.

Rorick v. U. S. Sugar Corp., 120 Fed. (2d) 418.

The rights of the parties, namely, petitioner, respondent and the private holders of title to land, and mortgages on the land, have been settled, time without number, since the historic decision by this Court in the case of *Fallbrook I. D. v. Bradley,* 164 U. S. 112.

The most recent case that involved the same basic conflict between public and private property rights to land in the Fallbrook Irrigation District is the case of *Fallbrook Dist. v. Cowan,* 131 Fed. (2d) 513. The Court below, in that case, sustained the absolute property rights of the district, after petition for a rehearing, but the appellee is, we are informed, about to petition this Court for a writ of certiorari, in the hope of getting the judgment reversed.

It seems obvious, in the instant case, that if the law was correctly construed in 131 Fed. (2d) 513, the final decree here challenged must be set aside, and that it should only be allowed to stand if the rule of property and law decreed in 131 Fed. (2d) 513 be reversed.

Clearly, if one person claiming to "own" land in such a district loses all right, title and interest to the land and is unable to obtain "relief" under the broad provisions of Section 75 of the Bankruptcy Act, no multiple of persons in like position should be permitted to circumvent the law by acting through a state agency filing under Chapter IX.

"A municipality holds title to property acquired for unpaid taxes in trust for the benefit of bondholders and other creditors of the District."

State v. Stacy, 116 Pac. (2d) 356 (Wash. Sup. Ct.).

See, also:

U. S. v. Greer Dr. Dist. (Miss.), 121 Fed. (2d) 675;

Moody v. Provident Irr. Dist., 12 Cal. (2d) 389, 85 Pac. (2d) 128.

In 61 *Cal. Juris.* 81 it is said:

"The taxing power of the State is exclusively a legislative function, * * *. Subject to the fundamental or organic limitations on the power of the state, the legislature has plenary power on the matter of taxation, and it *alone* has the right and discretion to determine all questions of time, method, nature, purpose, the extent in respect of the imposition of taxes, the subjects on which the power may be exercised, and all incidents pertaining to the proceedings from beginning to end; and the *exercise of such discretion,* within constitutional limitations, *is not subject to judicial control.*" (Emphasis ours.)

In 61 *Cal. Juris.* 70 and 24 *Cal. Jur.* 21 it is said that no tax, such as respondent and the counties of Riverside and Imperial are irrevocably pledged to levy and collect, "at the same time and in the same manner and form as county taxes are collected" and to be of "the same force and effect as other liens for taxes" (Cal. Stat. 1917, p. 818, Sec. 9) rests upon any contract, express or implied, between the state

and the party owing the tax, and that such a tax is therefore not a "debt".

Thus, are the bonds at bar, a "debt"? They represent merely a promise by an agency of the state that the money borrowed will be repaid from taxes, regardless of how long a time may be needed in order to enable respondent to fulfill such trust contract.

As this Court said in *Murray v. Charleston,* 96 U. S. 432:

> "But until the payment of the debt or interest has been made, as stipulated, we think no act of State sovereignty can work an exoneration from what has been promised to the creditor; namely payment to him, without a violation of the Constitution."

The property rights represented by the ownership of the bonds and coupons annulled by the final decree, is at least as vested as were the rights of Mr. Wood in the tax-title deed he had invested in, and which was upheld by this Court when it reversed the Supreme Court of Arkansas in *Wood v. Lovett,* 313 U. S. 362.

Is the power belonging to Congress, under the Bankruptcy Clause broad enough to take the property of Mr. Wood in that case and give it to Mr. Lovett?

Although no person claiming such property rights as did Mr. Lovett in that case, has been before the Court, in the instant case, the conflict is, at bottom between the same basic claims that were before this Court in the *Wood v. Lovett* case.

Here, there is in Court only your petitioner and the respondent, who is merely a public trustee with nothing at all to gain or lose, no matter what the outcome of the case.

The rental value or usufruct of all the land within the taxable boundaries of respondent will not be reduced nor affected one iota by the discharge provision in the final decree. The sole profit will inure to private landlords and speculators into whose pockets the usufruct of these fertile reclaimed lands will be diverted, once the final decree is allowed to become law, because they will be released from the duty of contributing that part of the usufruct as required by applicable State law equivalent to the sum of money taken from your petitioner by the final decree. Such interests will thus have been permitted to succeed in their drive to misappropriate and retain more of the usufruct than they are permitted to appropriate under the law.

The rental value or usufruct of all the land in this district has been dedicated by the California Legislature as a "public trust" for the "uses and purposes of the Act", which no private interest has any right, title or interest in as long as the bonds belonging to your petitioner are not paid in full, according to their terms.

Fallbrook I. D. v. Bradley, supra;
Fallbrook v. Cowan, supra;
Provident v. Zumwalt, supra.

As this Court said in *Charles River Bridge v. Warren Bridge,* 11 Pet. 419:

> "While the rights of private property are sacredly guarded, we must not forget that the community also have rights, and that the happiness and well-being of every citizen depends on their faithful preservation."

In *The Federalist,* No. XXXIII, it is said:

> "Suppose, by some forced constructions of its authority (which indeed cannot easily be imagined), the Federal legislature should attempt to * * * abrogate a land tax imposed by the authority of a State; would it not be equally evident that this was an invasion of that concurrent jurisdiction in respect to this species of tax, which its Constitution plainly supposes to exist in the State governments? If there ever should be a doubt on this head, the credit of it will be entirely due to those reasoners who, in the imprudent zeal of their animosity to the plan of the convention, have labored to envelop it in a cloud calculated to obscure the plainest and simplest truths."

IV.

THE DECISION OF THE COURT BELOW IS IN CONFLICT WITH THOSE OF OTHER CIRCUIT COURTS.

Since filing the petition in the instant case, petitioner has noted in the Federal Reporter a most interesting decision by the Fifth Circuit Court of Appeals, in the case of *State of Texas v. Tabasco School District,* 132 Fed. (2d) 62, a case on all fours with the instant case, as regards the relative rights of creditors. The Court below, in the instant case denied our right to receive, as a minimum, the same settlement as the

Reconstruction Finance Corporation, namely the same 4% refunding bonds instead of cash, with no interest at all for the many years of default and litigation.

In the *Tabasco* case, above, the Circuit Court stated:

> "Finally, it is claimed that the plan discriminates unfairly between creditors of the same class, in that the R.F.C. is in reality to receive its settlement in 4% bonds, whereas appellant is required to accept cash. We think the point is well taken, and that appellant is entitled to the same treatment as the R.F.C. In order that the plan may be modified in this respect, the judgment appealed from is reversed, and the cause remanded to the district court for further proceedings not inconsistent with this opinion."

In denying petition for a rehearing in this case, the Fifth Circuit Court of Appeals said (133 Fed. (2d) 196):

> "Reconstruction Finance Corporation appears in the record as the outright owner by purchase prior to June, 1940, of ninety-two per cent of the bonds of Tabasco Consolidated Independent School District, and as such owner accepted the offer of composition. The State of Texas owns the remaining bonds and refused acceptance. The decree finds that all bondholders are of one class, and is based on the acceptance of Reconstruction Finance Corporation. It also finds that the plan it approves does not discriminate unfairly in favor of any creditor, but we think it clearly does. The State is to get sixty-five per cent of the face of its bonds (as bonds not purchased by R.F.C.) in cash. Reconstruction Finance Corporation is to get 'the money expended by it for the purchase of old

bonds of petitioner as herein provided *with interest* on all disbursements for such purposes at 4% per annum *from date thereof.'* It is not to deposit its bonds with the disbursing agent, but is to be paid with the new 4% bonds to be issued. It is plainly getting new 4% bonds for its investment, *with interest added,* in exchange for the old bonds it owns, bought at 65 over three years ago. The State is to get 65, *without interest,* and in cash, though it considers new 4% bonds more desirable. Reconstruction Finance Corporation is not an outside lender of money, or purchaser of new bonds, but is the majority bondholder, *controlling* the fate of this composition. *It is entitled to nothing more than or different from what the minority receives.* The argument that it will not make a loan unless for the entire bond issue, because it will refuse to be a cocreditor, does not carry weight. *It is a co-creditor now.*

Rehearing denied." (Emphasis ours.)

In addition, we respectfully submit that the decisions of other Circuit Courts, cited below, are in conflict with the decision of the Court below, in the instant case.

Rittenoure v. Charlotte County, 109 Fed. (2d) 476 (C. C. A. 5th).

In re City of W. Palm Beach, 96 Fed. (2d) 85 (C. C. A. 5th);

Spellings v. Dewey, 122 Fed. (2d) 652;

Starr v. O'Connor, 118 Fed. (2d) 548;

Ohio Oil Co. v. Thompson, 120 Fed. (2d) 831;

Central R. R. of N. J. v. Martin, 115 Fed. (2d) 968.

V.

THE DECISION OF THE COURT BELOW CONFLICTS WITH APPLICABLE DECISIONS OF THIS COURT.

Clearly, nothing said in the *Bekins* case modified or reversed the doctrine of immunity as construed by this Honorable Court, without any deviation from the *McCulloch* case (4 Wheat. 316) to the *Ashton* case (298 U. S. 513) and the *Brush* case (300 U. S. 352, 367-369). Nor does the decision of this Honorable Court in the *Graves v. New York,* 306 U. S. 466 decision, or the *Faitoute Iron & Steel Co. v. City of Asbury Park, N. J.,* ..... U. S. ....., decided June 1, 1942, disclose any intention to overrule the immunity doctrine.

Therefore, we respectfully submit, with all deference, that the final decree in so far as it, in both legal and practical effect, releases the State funds and property for which the respondent is trustee, transcends the limitations imposed by the Act, 11 U. S. C. A. §403, in the subsections (c) and (i), and also the doctrine of immunity as construed by this Honorable Court in the case of

Ashton v. Cameron County W. I. D., 298 U. S. 513.

VI.

THE COURT BELOW HAS DECIDED AN IMPORTANT QUESTION OF LOCAL LAW IN CONFLICT WITH APPLICABLE LOCAL DECISIONS.

Among other conflicts with local decisions, we respectfully refer to the unsuccessful attempt to get the State Court to approve Section 113 (Cal. Stat. 1933,

p. 800) which was denounced in the case of *Selby v. Oakdale Irr. Dist.,* 140 Cal. App. 171, 35 P. (2d) 125, at page 176, as follows:

> "As to the right of the parties to prosecute this action, we agree with counsel that Sec. 113 (Stat. 1933, p. 800), added to the California Irrigation District Act by an Act of the legislature approved May 9, 1933, is ineffective for any purpose.
>
> Its unconstitutionality is so apparent that citation of authority seems needless * * *
>
> It is evident that the Legislature has no power to limit the right of any one whose property interests have been invaded to seek redress through the courts unless joined by others owning like property."

Similar unconstitutional attempts to invade the property rights of minority bondholders, were denounced by the State Supreme Court in:

County of San Diego v. Hammond, 6 Cal. (2d) 709, 44 Pac. (2d) 340.

In

Provident Land Corp. v. Zumwalt, 12 Cal. (2d) 365, 85 P. (2d) 116,

the Court was faced squarely with the problems of a district in at least as much difficulty as respondent here alleges that it was. Virtually all the privately held land also belonged to that district because of unpaid taxes. The Court there said:

> "* * * the district may freely transfer, *lease* or otherwise deal with the lands, in so far as its *power* is concerned, but the *lands* remain in trust, and the district exercises its powers, however

broad, as a trustee * * * it necessarily follows that their proceeds, whether by sale *or lease,* are likewise subject to the trust. * * * The land is the ultimate and only source of payment of the bonds. It can never be permanently released from the obligation of the bonds until they are paid." (Emphasis ours.)

In

Moody v. Provident Irr. Dist., 12 Cal. (2d) 389, 85 P. (2d) 128, at page 395,

the California Supreme Court said:

"That the annual assessments and the sale of the lands upon which the assessments are not paid may never realize sufficient money to pay the indebtedness of the district is entirely beside the question.

The property of the district, so far as it owns any property, *constitutes a public trust* and is held by the district for a public use, and, therefore, is not subject to levy and sale upon execution by a creditor of the district. (Citations.)

That the statute of limitations, under the circumstances disclosed by this case, *could never be pleaded* by the district *until* it had the money in its possession to pay the bonds belonging to plaintiff, and had given notice, is supported by the case of Freehill v. Chamberlain, 65 Cal. 603, 4 P. 646 * * *." (Emphasis ours.)

The final decree forever divests petitioner of his vested property rights in the "Public Trust", as above construed by the Supreme Court of California. Petitioner has had State property taken from him by a

Federal Court, in conflict with the applicable local decisions, and law above cited.

All funds and property of a California Irrigation District is property "owned by the State".

El Camino L. C. v. El Camino Irr. Dist., 12 Cal. (2d) 378, 85 P. (2d) 123.

CONCLUSION.

Your petitioner begs to quote an excerpt from the argument by Jeremiah Black to this Honorable Court in the *ex parte Milligan* case:

> "In peaceable and quiet times, our legal rights are in little danger of being overborne; but when the wave of power lashes itself into violence and rage, and goes surging up against the barriers which were made to confine it, then we need the whole strength of an unbroken Constitution to save us from destruction."

The actual controversy here presented far transcends any "ordinary run of the mill litigation", as respondent contends.

A long recognized principle of constitutional law, namely the doctrine of immunity has been violated by the final decree, if it should stand. The conflict between public and private rights to ground rent or usufruct lawfully payable to a sovereign State, without limit as to time or amount is also directly presented and is of the widest possible significance and importance to the general welfare.

A careful study of the hearings and debate in the Congress on the amended Chapter IX leads your petitioner to suggest, without the slightest fear of successful contradiction, that the Congress freely recognized its lack of authority to control or regulate the application of State funds, with or without the consent of a State and intended the amended act to include only proprietary and non-governmental activities of local entities. The radically altered severability clause (Sec. 401) of the amended act seems to prove clearly that the Congress had no doubt whatever that petitions by such mere mandatories or agents of the State as respondent, whose property is State owned, and therefore wholly a State affair, would not be sustained because of conflict with State authority, and with the fundamental principal of the *Ashton* case, which is still the law.

For this reason, and with all deference your petitioner respectfully urges that this petition for a rehearing should be granted, and that a writ of certiorari be issued out of and under the seal of this Honorable Court as prayed for in the petition for writ of certiorari, herein.

Dated, San Francisco, California,
April 23, 1943.

Respectfully submitted,
J. R. MASON,
Petitioner in Propria Persona.

CERTIFICATE.

I do hereby declare the foregoing petition for a rehearing of this cause is presented in good faith and not for delay.

Dated, San Francisco, California,
April 23, 1943.

J. R. MASON,
Petitioner in Propria Persona.